IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

SECOND APPEAL NO. 59 OF 2006
WITH
SECOND APPEAL NO. 62 OF 2006

1. Joaquim Diago Fernandes,
   major, married, resident of
   Goletin, Saligao, Bardez, Goa.
2. Jessey Fernandes,
   major, married, resident of
   Goletin, Saligao, Bardez, Goa. .... Appellants

Versus

David George Paul Fernandes,
major, resident of Pequein Morod,
Saligao, Bardez, Goa. .... Respondent

Shri Daniel Andrade with Shri D.V. Patkar, Advocates for the Appellants.
Shri N.N. Sardessai, Advocate for the Respondent.

CORAM : **P. V. KAKADE, J.**

DATE : **17th October, 2006**

ORAL ORDER :

Heard the learned Counsel for both the parties. Perused the record. This order disposes of both the appeal as they arise out of the common judgment and identical facts. The parties are also the same. Both these appeals are filed against the judgment and order passed by the lower appellate Court dated 20/06/2005, whereby Regular Civil Appeal No.

11/2005 came to be dismissed and the order passed by the trial Court in Regular Civil Suit No. 30/1992/B(E) was confirmed, whereas the Second Appeal bearing no. 59/2006 arises out of order dated 20/06/2005, whereby appeal was partly allowed to the extent that respondents/defendants were directed to demolish the construction done by them in plot no. (j) and leave the land occupied by the old cowshed in the joint possession of the appellant/plaintiff, respondent no.1/defendant no.1 and the other co-mundkars. Subject to this relief, the remaining part of the judgment and decree of the trial Court came to be confirmed.

2. The plaintiff came with a case that he was the brother of defendant no.1. The defendant no.1 is a husband of defendant no.2. There was a property bearing Survey no. 318/6 at Saligao, Bardez Goa. Within the said property there is a house bearing no. 2/116. Said house has two portions. The parents of the plaintiff were residing in the eastern portion of house as mundkars. The landlord of the property subdivided the property into plots. The mundkarial house of the parents of the plaintiff was located in plot (i). By sale deed dated 15/02/1989, plaintiff purchased plot (i) from the landlord and by another sale deed dated 13/02/1989 plaintiff purchased plots no. (f), (g), (j) and (k) from the landlord. According to the

plaintiff, he was in peaceful possession of plots no. (f), (g), (j) and (k). But the defendants were picking up quarrels with the plaintiff for no reason and on 25/02/1992 the defendants started construction in plot no. (j). On 3/12/1985, the defendant started plucking coconuts from the coconut tree in plots no. (f), (g), (j) and (k). Therefore, it was prayed that the defendants be directed to demolish the construction carried out by them in plot no. (j) and further prayer was made for perpetual injunction against the defendants from interfering with the plaintiff's possession in plots no. (f), (g), (j) and (k).

3. The defendants, inter alia, denied the allegations and challenged the suit stating that the allegations were not true. The bone of contention of the defendants was that they had become owners by adverse possession of the impugned plot held by them and, therefore, suit was sought to be dismissed with costs.

4. The learned trial Judge on the basis of available evidence and pleadings on record adjudicated the dispute coming to the conclusion that the plaintiff had proved that he was owner in possession of plots no. (f), (g), (j) & (k) of the property under Survey No. 318/6 of Saligao Village. It

was further held that defendants failed to prove their title by adverse possession and as such the suit came to be disposed of in the aforesaid terms. The appeal was carried to the lower appellate Court, wherein the appellate Court came to the conclusion that, but for the direction with regard to the plot no. (j), the entire findings recorded by the trial Court were entitled to be confirmed and as such both the appeals came to be disposed and hence present appeals.

5. At the outset, it may be noted that there is absolutely no substantial question of law involved in these appeals. The only question according to the learned Counsel for the appellants in both the appeals is to the effect that the order passed by the lower appellate Court is arbitrary, illegal and perverse in view of the facts admitted by the respondents at the trial that the appellants were in possession of the suit plots. According to the learned Counsel, the Courts below misread the evidence and ignored relevant material and vital pieces of evidence. In this regard, it must be noted that the only question worth considering for both the Courts was in respect of alleged adverse possession of the defendants in the suit property and both the Courts have concurrently held that the defendants failed to prove their adverse title to the impugned property. On perusal of the entire

judgment of both the Courts below it is seen that the trial Court as well as the appellate Court have dealt with the issue with regard to the adverse possession exhaustively in answer to additional issue no. 2 and have come to the conclusion that the defendants were still considering themselves as tenants of the suit property after stopping payment of rent to the bhatkar and not as owner by adverse possession and, therefore, there was no question of ousting their lanlord or plaintiff from the suit property and once there is no ouster of possession there cannot be adverse possession since there was no hostile title established by the Plaintiff.

6. I see no perversity in recording findings in this manner on the basis of available evidence. I also see no perversity in confirming this finding of the lower appellate Court. There is no other worth while question raised which would require elaborate consideration at this stage and I am satisfied that both the Courts below have properly appreciated the evidence on record and, therefore, it would brook no interference. In the result, the appeals stand dismissed with no order as to costs.

P.V. KAKADE, J.

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